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U.S. Citizenship  
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FILE: [REDACTED]  
SRC-06-229-53713

Office: TEXAS SERVICE CENTER

Date: **NOV 04 2006**

IN RE: Petitioner:  
Beneficiary:



PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is an architectural firm. It seeks to employ the beneficiary permanently in the United States as an architectural and civil drafter (technical illustrator). As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor (DOL). The director determined that the petitioner had not established that the beneficiary had the requisite experience as stated on the labor certification application. The director denied the petition accordingly.

The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

The petitioner in the instant petition and appeal were represented by Attorney [REDACTED] with a Form G-28, Notice of Entry of Appearance as Attorney or Representative. A review of the State Bar of California data at [http://members.calbar.ca.gov/search/member\\_detail.aspx?x=189407](http://members.calbar.ca.gov/search/member_detail.aspx?x=189407) (accessed October 23, 2008) reveals that [REDACTED] became ineligible to practice law in California on May 18, 2007 and resigned on May 18, 2008. Thus, the petitioner is considered self-represented in this matter.

As set forth in the director's December 19, 2006 denial, the only issue in this case is whether or not the petitioner has demonstrated that the beneficiary is qualified to perform the duties of the proffered position.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

The petitioner must demonstrate that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750 Application for Alien Employment Certification as certified by the U.S. Department of Labor and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the Form ETA 750 was accepted on April 20, 2001.

The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.<sup>1</sup> On appeal, the petitioner submits a brief, technical drawings rendered by the beneficiary for [REDACTED] and letters from [REDACTED]. Other relevant evidence in the record includes a job description for Applications Engineer, Manufacturing [REDACTED] from DOL's

<sup>1</sup> The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

Dictionary of Occupation Titles (DOT), the beneficiary's diploma in machines tool (CNC) technician from National Polytechnic Institute, certificates for 36-hour autocad automatization studies and 36-hour programming language for autocad environment studies from Autonomous National University of Mexico, a job offer letter dated June 25, 1997 from [REDACTED] June 25, 1997 job offer letter), an employment termination letter dated September 8, 2000 from [REDACTED] VP, Finance and CFO of [REDACTED] September 8, 2000 termination letter), a copy of TomaHawk's Employee of the Month for September 1998, an e-mail dated December 22, 1998 from [REDACTED] December 22, 1998 e-mail) and the beneficiary's paycheck stubs from [REDACTED]. The record does not contain any other evidence relevant to the beneficiary's qualifying experience.

On appeal, the petitioner asserts that the previously submitted evidence and new evidence submitted on appeal is sufficient to establish the beneficiary's qualifying experience with [REDACTED] and the beneficiary is qualified for the proffered position.

To determine whether a beneficiary is eligible for an employment based immigrant visa, Citizenship and Immigration Services (CIS) must examine whether the alien's credentials meet the requirements set forth in the labor certification. In evaluating the beneficiary's qualifications, CIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. CIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). *See also, Mandany v. Smith*, 696 F.2d 1008, (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

The Application for Alien Employment Certification, Form ETA-750A, items 14 and 15, set forth the minimum education, training, and experience that an applicant must have for the proffered position. In the instant case, item 14 describes the requirements of the technical illustrator position as follows:

14.	Experience	
	Job Offered	2 [years]
	Related Occupation	Blank

Item 13 of the Form ETA 750A describes the job duties as follows:

Draw illustrations and artistical[sic] interpretations of architectural structures like homes, buildings etc. for reproduction in reference works or brochures, based on architects blueprints and engineering drawings.

Item 15 of Form ETA 750A does not reflect any special requirements.

The beneficiary set forth his credentials on Form ETA-750B and signed his name on April 12, 2001 under a declaration that the contents of the form are true and correct under the penalty of perjury. On Part 15, eliciting information of the beneficiary's work experience, he represented that he has been working in the proffered position for the petitioner since September 2000. Prior to that, he worked as a full-time (working 40 hours per week) technical illustrator for [REDACTED] in San Diego, California from August 1997 to September 2000. He did not provide any additional information concerning his employment background on that form.

The regulation at 8 C.F.R. § 204.5(g)(1) states in pertinent part:

Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received. If such evidence is unavailable, other documentation relating to the alien's experience or training will be considered.

The AAO notes that the record does not contain an experience letter from the beneficiary's current or former employer which meets the requirements set forth by the above quoted regulation. The petitioner submitted two letters from the beneficiary's former employer, [REDACTED]. However, one is a job offer letter and the other is an employment termination letter. Therefore, the petitioner failed to submit a letter from [REDACTED] which verifies the beneficiary's full-time employment with that company for at least two years and includes a specific description of the duties performed by the beneficiary during the employment period.

However, as quoted above, the regulation at 8 C.F.R. § 204.5(g)(1) allows the director to consider other documentation relating to the alien's experience if a letter from a current or former employer is unavailable. In the instant case, the record does not contain any evidence submitted by the petitioner indicating whether a regulatory-prescribed letter from the former employer is available or not and if not, why such a letter is not available. This office accessed the California Secretary of State's official website at <http://kepler.sos.ca.gov/corpdata/ShowAllList?QueryCorpNumber> [REDACTED] (accessed on October 23, 2008) which shows that [REDACTED] registered as an Illinois corporation with a business address [REDACTED] [REDACTED] has been forfeited. This office also accessed the Illinois official corporation database at <http://www.ilsos.gov/corporatellc/CorporateLlcController> (accessed on October 23, 2008) and learned that [REDACTED] was incorporated as an Illinois corporation on February 3, 1993 but filed for bankruptcy on September 11, 2000. Therefore, it is concluded that in the instant case, a regulatory-required letter from the beneficiary's former employer is unavailable since the company no longer exists. In this circumstance, the AAO will consider other documentation relating to the alien's experience or training in the record in determining the beneficiary's qualifications.

The [REDACTED] June 25, 1997 job offer letter shows that [REDACTED] offered employment to the beneficiary as an application engineer from August 1, 1997. Without the beneficiary's acceptance and the employer's verification of the actual employment, the offer letter itself cannot establish the beneficiary's employment. However, the petitioner also submitted the [REDACTED] September 8, 2000 termination letter and the beneficiary's paycheck stubs. The [REDACTED] September 8, 2000 termination letter demonstrates that the beneficiary's employment with [REDACTED] was terminated on September 8, 2000. The beneficiary's paycheck stubs show that the beneficiary was paid compensation for his services provided as an employee from August 1, 1997 to September 2, 2000 and the amount paid was sufficient to verify the beneficiary's full-time employment. These three documents have at least established that the beneficiary worked on a full-time basis for [REDACTED] for more than three years from August 1, 1997 to September 2, 2000. Therefore, the petitioner has demonstrated that the beneficiary had more than three years of experience working on a full-time basis for [REDACTED] with sufficient evidence.

With respect to the position filled and the duties performed by the beneficiary at [REDACTED], the record also contains a [REDACTED] December 22, 1998 e-mail, technical drawings rendered by the beneficiary for

[REDACTED], and letters from [REDACTED]. In his letter dated February 5, 2007, [REDACTED] of AACI, verified that the beneficiary worked at [REDACTED] from August 1, 1997 until September 8, 2000 with a specific description of the duties the beneficiary performed. However, [REDACTED] did not indicate the sources from which he could verify the beneficiary's employment at [REDACTED], nor did he explain the relationship between AACI or himself and [REDACTED] or the beneficiary, that is, in what position he could verify the beneficiary's experience with [REDACTED]. The AAO cannot determine that [REDACTED] is or was in a position to verify the beneficiary's employment at [REDACTED] and therefore, cannot consider [REDACTED] February 5, 2007 letter as sufficient evidence alone to establish the beneficiary's qualifying experience for the proffered position.

However, the [REDACTED] June 25, 1997 job offer letter offered the beneficiary a position of Applications Engineer. In the [REDACTED] December 22, 1998 e-mail, [REDACTED] talked about the duties performed by the beneficiary in checking and correcting drawings. The technical drawings submitted on appeal show that they were drawn by the beneficiary. The petitioner submits a letter dated January 12, 2007 from [REDACTED] [REDACTED] the former third shift supervisor of [REDACTED]. In the letter, [REDACTED] stated in pertinent part that:

This letter is to verify that [the beneficiary] worked at [REDACTED] as an Applications Engineer from August 5<sup>th</sup>, 1997 to Sept 21<sup>st</sup> 2000. At the time his duties included the following tasks: Draw illustrations and artistical interpretations of architectural structures like homes, buildings, etc. for reproduction and reference works or brochures, based on architects blueprints and engineering drawings.

[REDACTED] the former Federal Program Manager of TomaHawk, indicated in his letter dated January 30, 2007 that he directly supervised the beneficiary or was his second level supervisor. Mr. [REDACTED] letter stated regarding the beneficiary's employment with [REDACTED] in pertinent part that:

This letter is to verify that [the beneficiary] worked at [REDACTED] as an Applications Engineer from 08/1997 to 09/2000. His tasks included the conversion of legacy (paper) drawings and blueprints into digital archival formats – primarily AutoCAD. The legacy drawings came from a variety of sources including but not limited to US Army equipment like the M113 Armored Personnel Carrier, the HUMVEE, aircraft and naval ship system schematics, building and architectural drawings.

The term "Application Engineer" was derived from the US Government contracts we worked on that specified certain AutoCAD drafting tasks and measured those tasks against the experience level in those tasks.

[The beneficiary], in addition, showed a flair for creating original AutoCAD subroutines and scripts which in turn made the drafting work of his team mates easier and more efficient.

These letters from the beneficiary's former supervisors at [REDACTED] verified that the beneficiary worked for [REDACTED] as an application engineer from August 1997 to September 2000 and further verified that the duties performed by the beneficiary at [REDACTED] qualify him to perform the duties described in Item 13 of the From ETA 750A since they are similar in nature.

The AAO finds that in the instant case, the petitioner has established that the beneficiary worked for more than three years for [REDACTED] as an application engineer, and that the beneficiary's duties performed at

qualify him to perform the duties described in item 13 of the Form ETA 750 for the proffered position with sufficient alternative documentation.

Therefore, the petitioner demonstrated that the beneficiary possessed the requisite two years of experience required by the Form ETA 750 prior to the priority date, and thus, is qualified for the proffered position. The petitioner's assertions on appeal have overcome the ground of denial in the director's decision. The director's December 19, 2006 decision will be withdrawn.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden.

**ORDER:** The appeal is sustained. The petition is approved.